

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAR 1 1995

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of DOCKET FILE COPY ORIGINAL )  
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Amendment of Parts 2 and 15 of the )  
Commission's Rules to Permit Use of )  
Radio Frequencies Above 40 GHz for )  
New Radio Applications )

ET Docket No. 94-124  
RM-8308

**REPLY COMMENTS OF THE MINORITY MEDIA  
AND TELECOMMUNICATIONS COUNCIL**

The Minority Media and Telecommunications Council ("MMTC") respectfully submits these Reply Comments in support of consideration of minority ownership incentives for allocation of the spectrum above 40 GHz.

MMTC, founded in 1986, is the association of attorneys, scholars, engineers and economists which assists the civil rights community in communications policy matters.

The NPRM, 9 FCC Rcd 7078, 7098 ¶48 (1994) has wisely sought "the broadest possible information on the appropriate regulatory and technical requirements for such services." However, MMTC notes that the minority ownership issue does not appear to have been addressed or anticipated by those filing initial comments.

The Commission must take minority ownership into account when it manages the spectrum. Garrett v. FCC, 513 F.2d 1056 (D.C. Cir. 1975). Nonetheless, the Commission has generally allotted spectrum without any advance consideration of the need for minority entry. As a result, minorities subsequently find themselves locked out completely, forced to buy what others were

initially given for free,<sup>1/</sup> or left to engage in long legal battles for the few remaining crumbs of spectrum space.<sup>2/</sup>

The Commission has had favorable experience in the Clear Channel proceeding with a moderate, non-quota system to stimulate minority entry. Clear Channels, 78 FCC2d 1345, recon. denied, 83 FCC2d 216 (1980), aff'd sub nom. Loyola University v. FCC, 670 F.2d 1222 (D.C. Cir. 1982). Applying a procedure akin to that in Clear Channels to the spectrum above 40 GHz, the Commission could (1) identify spectrum for which minority and other underrepresented entrepreneurs would likely be in a position to develop applications; (2) entertain applications by a date certain from minorities, noncommercial entities, and those proposing demonstration or especially innovative uses (the "initially eligible groups"); (3) if there are no timely applications from members of the initially eligible groups, the spectrum would be opened to the general public.

Alternatively, if the spectrum is to be auctioned, the Commission should employ a procedure similar to that employed for PCS and IVDS, with incentives to remedy the capital formation needs of designated entities, including minorities.

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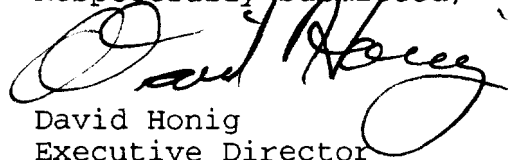
<sup>1/</sup> This has led to conflict over the tax loss to the treasury derived from the need to create incentives to promote minority purchases of facilities. See H.R. 831 (which would repeal 26 U.S.C. §1071). How much simpler it would have been if minority ownership had been considered from the outset of the spectrum allocation process.

<sup>2/</sup> See, e.g., AM Broadcast Service, 6 FCC Rcd 6273 (1991), recon. denied, 8 FCC Rcd 3250 (1993), aff'd sub nom. NAACP v. FCC, D.C. Cir. No. 93-1433 (decided October 27, 1994).

Some potential uses of the above 40 GHz band, such as the local millimeter wave services ("LMWS"), if technically achievable, have promise for applications which can be undertaken by small and minority businesses. See Joint Comments of Educational Parties (filed January 30, 1995).

The Commission should recognize that the above 40 GHz spectrum is uncommonly difficult to use. Consequently, the Commission should avoid dumping, into spectrum above 40 GHz, promising small business applications which currently use lower ranges of the spectrum, if the Commission finds that such a reallocation would diminish opportunities for minority ownership.<sup>3/</sup>

Respectfully submitted,



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<sup>3/</sup> The local multipoint distribution systems ("LMDS"), currently in the 28 GHz band, may have potential for use by small and minority entrepreneurs. See Comments of the Chief Counsel for Advocacy of the United States Small Business Administration, CC Docket No. 92-297 (filed February 14, 1995), at 5 ("[t]he relatively low cost...would enable groups generally underrepresented in the ownership of mass media properties to obtain such properties.") According to the comments of LMDS system designers, LMDS might not survive if reallocated above 40 GHz. See Comments of Texas Instruments (filed January 27, 1995); Comments of CellularVision (filed January 30, 1995).